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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services

H2

FILE:

Office: VIENNA, AUSTRIA

Date:

FEB 24 2004

IN RE:

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was approved and subsequently revoked by the Officer in Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may travel to the United States to reside there with his spouse.

The officer in charge (OIC) determined that the demonstrated hardship to the applicant's spouse did not overcome the egregious nature of his convictions and propensity of violence shown at the time the crimes were committed. The approval of the Acting OIC, dated December 20, 2002, was therefore, revoked and the application was denied accordingly. See Decision of Officer in Charge, dated April 15, 2003.

On appeal, the applicant's spouse states that there are two mistakes in the submitted medical diagnosis for the applicant. She asserts that these two mistakes "give a false picture of Gheorghe's mental state of health and contradict the reality of his rehabilitation." See Form I-290B, dated May 12, 2003.

In support of these assertions, the applicant's wife submits a letter from the employer of the applicant and his spouse, dated June 17, 2002. The record also contains a letter from the applicant's spouse, dated November 27, 2002; a copy of a letter relating to the student loans of the applicant's spouse, dated October 20, 2002; verification of the employment of the applicant; a summary of educational criteria and associated costs in Romania; a letter from a social worker who treated the applicant's spouse, dated November 20, 2002; a copy of a letter of acceptance into a graduate program addressed to the applicant's spouse, dated April 2, 2001; copies of the passports issued to the applicant and his spouse and court documents relating to the applicant's convictions. The entire record was considered in rendering a decision on the appeal.

The record reflects that the applicant was convicted of robbery and stealing money by threatening with battery, in Romania, on separate occasions in 1995 and 1996. The applicant was sentenced to five years imprisonment for these crimes.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

- (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, the applicant's wife asserts that residing in Romania imposes extreme hardship on her. The applicant's wife states that she seeks to continue her education and cannot do so in Romania as she does not speak the language and would be unable to obtain loans to finance the endeavor. She further contends that her lack of language skills prevents her from working in her chosen field of counseling in Romania. Further, the applicant's wife suffers from an eating disorder for which she sought and obtained treatment while living in the United States. The applicant's wife continues to require care for her condition and contends that assistance is not available in Romania. The applicant's wife also cites the repayment of her existing student loans and her desire to reside near her family as reasons that residing in Romania imposes extreme hardship on her. See Letter from [redacted] dated November 27, 2002.

However, the applicant's wife does not establish extreme hardship if she returns to the United States in order to further her education and career, obtain adequate treatment for her eating disorder, repay her student loans and reside nearer to her family. The AAO notes that, as a naturalized U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from her husband. However, her situation, if she returns to the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pileh*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that

was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Although the decision of the OIC weighs the favorable factors in the application against the unfavorable ones, the AAO finds this analysis to be in error; a consideration of whether or not the Secretary should exercise discretion is not reached unless extreme hardship is first established. The error is harmless as the OIC's analysis yields the same result.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. See Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.